

Register under Trademark Act Section 2(e)(1), 15 U.S.C. 1052(e)(1), because the proposed mark is deemed to merely describe the identified goods. Specifically, the Examining Attorney believes the mark to describe its intended area of use.

ARGUMENTS

I. APPLICANT'S MARK IS NOT MERELY DESCRIPTIVE BY DESCRIBING THE INTENDED AREAS OF USE FOR THE GOODS

The Examining Attorney argues that the mark "FARM & HOME" "aptly describes the intended areas of use for the goods." (Examining Attorney's Appeal Brief at p. 2). The Examining Attorney believes that "a prospective purchaser may easily determine that the subject goods are designed and/or intended for both farm and home use." (Examining Attorney's Appeal Brief at p.2). However, "a term is merely descriptive within the meaning of Section 2(e)(1) if it conveys an immediate idea of an ingredient, quality, characteristic, function or feature of the product in connection with which it is used." In re Morton-Norwich Product, Inc., 209 U.S.P.Q. 791 (T.T.A.B. 1981).

The Court in In re Hutchinson, Inc., reversed the board's holding that "TECHNOLOGY" was merely descriptive of Applicant's goods which related to computer products and held that the "fact that the term 'technology' is used in connection with computer products does not mean that the term is descriptive of them. Many other goods possibly **may** be included within the broad term 'technology,' but that does not make the term descriptive of all those goods." 852 F.2d 552, 7 U.S.P.Q.2d 1490, 1492-93 (Fed. Cir. 1988) (emphasis added). Similarly, the terms "FARM" and "HOME" are broad terms that can encompass many products. In fact, almost all products aimed at the consumer may be used inside and around a "farm" or "home."

The Examining Attorney dismisses evidence of this long recognized principle supported by the examples of registered marks by arguing that “there is no indication that the subject wording was particularly pertinent given the nature of the subject goods.” (Examining Attorney’s Brief at p.3). However, a closer look at the registered marks shows that each of the goods may be used in and around a “farm” or “home.” See e.g., “FARM & RANCH,” Reg. No. 2,003,037 for “battery chargers” – clearly battery chargers may be used in a “farm” or “ranch”; “FARM-ASSIST,” Reg. No. 1,455,064 for “computer programs for use in the field of agriculture” – clearly computer programs for use in the agriculture field may be used on a “farm”; “HOME & HEARTH,” Reg. No. 2,110,565 for “windows, namely, window casements, window frames, window panes, shutters, and sills” – clearly windows may be used in and around a “home.”

Applicant’s goods are “manually-operated compression sprayers.” Of course, they may be used in a “farm” or a “home.” However, they may also be used in parks, gardens, restaurants, ranches, amusement parks, office buildings, highways, apartments, all types of business locations, etc. The Examining Attorney points to Applicant’s promotional literature as clearly depicting the use of its “sprayers in what appears to be a farm context, with a user spraying the area around livestock fencing.” (See Examining Attorney’s Appeal Brief at p. 2). However, livestock is more closely related to ranches. Moreover, the promotional literature could just as well be a depiction of a ranch, stable, petting zoo, or any number of other locations.

Furthermore, attached hereto as Exhibit A and B are two additional specimens which show additional depictions of the goods. The setting shown in Exhibit A can be virtually anywhere. It can be a garden, park, outside an office building, outside of a restaurant, etc. In addition, Exhibit B shows the goods being marketed without a depiction of any particular location. The places where

sprayers for dispensing liquids may be used are truly endless. Accordingly, Applicant's mark is not descriptive as to its intended areas of use.

II. APPLICANT'S MARK IS NOT MERELY DESCRIPTIVE OF SPRAYERS

"FARM & HOME" is arbitrary, as an "arbitrary" mark is one that uses common words but neither suggests nor describes any ingredient, quality or characteristic of the underlying goods. See, Tisch Hotels, Inc. v. Americana Inn, Inc., 350 F.2d 609, 146 U.S.P.Q. 566 (7th Cir. 1965). The terms "farm" and "home" do not describe sprayers in any way. Sprayers may be used in a "farm" or "home" but they may also be used in hundreds of other locations. Thus, "FARM & HOME" cannot be said to describe any ingredient, quality or characteristic of the underlying goods.

Applicant's mark "FARM & HOME" is at most suggestive. A term is suggestive if some imagination, thought or perception is required to determine the nature of the goods. Union Carbide Corp. v. Ever-Ready, Inc., 531 F.2d 366, 379, 188 U.S.P.Q. 623, 635 (7th Cir. 1976) cert denied, 429 U.S. 830, 50 L.Ed.2d 94, 97 S.Ct. 91, 191 U.S.P.Q. 416 (1976) (holding that "if the mark...stands for an idea which requires some operation of the imagination to connect it with the goods, it is suggestive."); In re Shutts, 217 U.S.P.Q. 364-65 (T.T.A.B. 1983) (SNO_RAKE held not merely descriptive of snow removal hand tools); T.M.E.P. § 1209.01(a) ("[s]uggestive marks are those which require imagination, thought or perception to reach a conclusion as to the nature of the goods or service").

A consumer must undertake a number of complex thought processes and mental leaps to go from "FARM & HOME" to a "sprayers for dispensing liquids." The goods are designed to be

sprayers that can be used in almost any location with almost any type of liquid. Thus, the Applicant's mark is not descriptive of any ingredient, quality or characteristic of the goods.

III. CONCLUSION

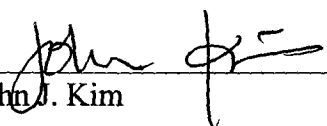
Any doubt as to whether a mark is "merely descriptive" or suggestive must be resolved in favor of the Applicant. See e.g., In re Morten-Norwich Products, Inc., 209 U.S.P.Q. 791 (T.T.A.B. 1981) (noting that "it is the Board's practice to resolve the doubt in the applicant's favor and publish the mark for opposition). Accordingly, Applicant respectfully requests the application be approved for publication.

The Commissioner is hereby authorized to charge any additional fees, which may be required, or credit any overpayment to Lyon & Lyon's Deposit Account No. 12-2475.

Respectfully submitted,

LYON & LYON LLP

Dated: 6-3-02

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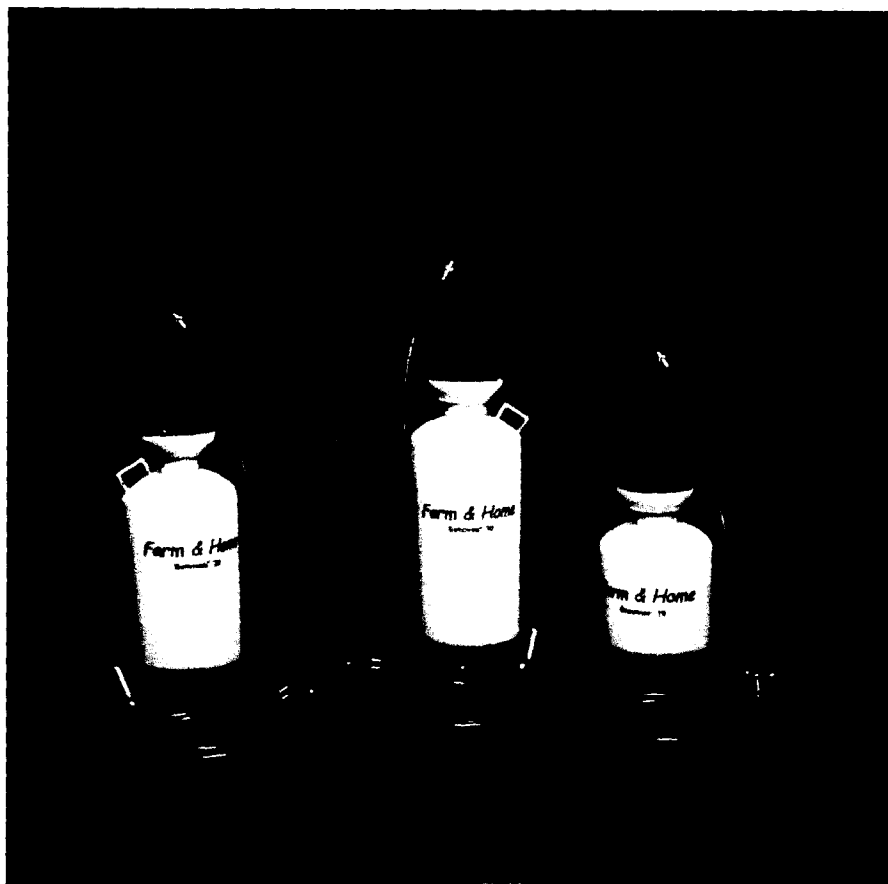
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- ✓ Survivor /10 is 1 gallon capacity, empty weight is xx lbs
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